

STATE OF LOUISIANA
THIRD CIRCUIT COURT OF APPEAL

DOCKET NO. KW 10-917

STATE OF LOUISIANA

VERSUS

TROY BONIN

FROM THE PARISH OF IBERIA
16TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA
(Nos. 00-0220 and 95-0367, Hon. James R. McClelland, presiding)

BRIEF OF *AMICUS CURIAE*
ON BEHALF OF LOUISIANA PUBLIC DEFENDER BOARD
IN SUPPORT OF APPLICATION FOR SUPERVISORY WRITS
FILED BY THE 16TH JUDICIAL DISTRICT PUBLIC DEFENDER
OFFICE

SUBMITTED BY:

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STATEMENT OF THE CASE

In 1995, Troy Bonin was charged with various sex offenses involving a juvenile in Case Number 95-0367. On April 10, 1995, Mr. Bonin pled guilty to one count of molestation of a juvenile (LSA R.S. 16:81.2); one count of sexual battery (LSA R.S. 14:43.1); and one count of aggravated oral sexual battery (LSA R.S. 14:43.3). He was sentenced to serve ten years at hard labor for each count with all but five years suspended and placed on five years probation with numerous conditions. On August 25, 2000, the District Court revoked Mr. Bonin's probation and made the balance of his sentence executory.

Meanwhile, the State filed a bill of information in Case Number 00-0220 charging Mr. Bonin with molestation of a juvenile in violation of LSA R.S. 14:81.2. On June 9, 2000, Mr. Bonin pled guilty to this charge and was sentenced to fifteen years at hard labor with all but ten years suspended and placed on five years of supervised probation.

Thereafter, in 2010, a Louisiana Sex Offender Assessment Panel ("SOAP") filed for a hearing to classify Mr. Bonin as Child Sexual Predator. The District Court set the matter for a hearing on June 18, 2010 pursuant to LSA R.S. 15:560.2(I). In its Order and Notice, the District Court appointed the Sixteenth Judicial District Public Defender Office (hereinafter "Public Defender Office") to represent Mr. Bonin at the SOAP contradictory hearing. Prior to the hearing date, the Public Defender Office filed written objections to this appointment.

On June 18, 2010, the District Court heard arguments on the objections as to representation by the Public Defender Office. The objections were

overruled and the District Court re-iterated its appointment of the Public Defender Office to represent Mr. Bonin in the SOAP proceedings. The Public Defender Office noted an objection to the appointment and timely filed a Notice to Seek Writs with the Louisiana Court of Appeals, Third Circuit. The Louisiana Public Defender Board (LPDB) files this Brief of *Amicus Curiae* in support of the Application for Supervisory Writs of Review filed by the 16TH Judicial District Public Defender Office.

LAW AND ARGUMENT

MAY IT PLEASE THE COURT:

The Louisiana Public Defender Board (hereinafter “LPDB”) files this *amicus curiae* brief to clarify that appointment of public defenders as counsel in contradictory hearings to determine the validity of findings by Sex Offender Assessment Panels is an error of law, manifestly erroneous, and clearly wrong. The appointment of public defenders in these hearings is a *res nova* issue for Louisiana courts, as the statute mandating appointment of counsel for hearings to determine if a sex offender is subject to lifetime registration and intrusive monitoring requirements is only now being utilized. Unlike similar statutes providing for the appointment of counsel, this particular statute is silent as to which entity is to provide representation and where funding responsibility lies. Public defenders have limited statutory authorization and responsibility to represent criminal defendants and those persons specifically enumerated in the Louisiana Public Defender Act. LSA R.S. 15:141, *et seq.* Persons appearing in court after an adverse Sex Offender Assessment Panel finding are not criminal defendants, as statutorily defined, and do not fall within a class specifically enumerated in Act 307. Therefore, public defenders lack the statutory authority and responsibility to represent this class of offender.

On June 2, 2006, Act 186 of the 2006 Legislature was signed into law. This law, enacted as LSA R.S. 15:560 *et seq.* (hereinafter “SOAP Law”), established Sex Offender Assessment Panels (hereinafter “SOAP”), charged with evaluating the potential future dangerousness of inmates convicted for certain enumerated sex offenses. The Panels assess an inmate at least six

months prior to release from custody in the Department of Corrections and are statutorily directed to determine if the soon-to-be-released offender should be classified as a Sexually Violent Predator or a Child Sexual Predator. Such a classification, if affirmed by the District Court, would subject the offender to lifetime registration and monitoring requirements.

The SOAP law was amended upon passage of Act 126 of the 2007 Regular Session of the Louisiana Legislature. Among other things, the Legislature reduced the number of members on the panel from six to three and provided that any decision by the Panel may be appealed in accordance with the Department of Public Safety and Correction's administrative remedy procedure. The 2009 Legislature noted that "these provisions were rarely utilized" after passage of the 2006 law or its successive amendment.¹ LSA R.S. 15:560 (B). Neither the original legislative enactment nor the subsequent amendment addressed the issue of an indigent offender's right to counsel.

SOAP's second amendment (Act 205 of the 2009 Regular Session of the Louisiana Legislature) addressed, for the first time, an offender's right to counsel. Pursuant to Act 205 (codified at LSA R.S. 15:560.2(I)):

Upon receiving a recommendation from the panel, the court, on its own motion, shall schedule a hearing to review the recommendation that an offender is a sexually violent predator or a child sexual predator. Notice of the hearing shall be served on the offender where he is located, his attorney of record, the office of the district attorney who prosecuted the offender for the underlying offense, and the victim of the underlying offense provided that the victim is registered pursuant to the provision of R.S. 46:1841 *et seq.* The notice shall inform the offender that has the right to be present at the hearing, that he has the right to

¹ Although previously "rarely utilized," SOAP proceedings are currently being set in many districts all across the state.

present evidence, *that he has a right to counsel, and that if indigent, an attorney will be appointed to represent him.* If, after a contradictory hearing, the court finds by clear and convincing evidence, that the offender is a sexually violent predator or a child sexual predator, the offender shall be ordered to comply with the provision of R.S. 15:560.3. [Emphasis added].

Now that contradictory hearings on SOAP assessments have commenced in multiple courtrooms across Louisiana, the right to counsel provision contained within LSA R.S. 15:560.2(I) is proving to be problematic for the State's public defenders and, as the regulatory agency in charge of supervising them, the Louisiana Public Defender Board (LPDB). While the Louisiana Public Defender Board supports the provision of counsel in these proceedings, the LPDB files this *amicus curiae* brief to express the view that local public defender offices are not the proper entity to provide representation in SOAP hearings.

I. APPOINTING PUBLIC DEFENDER OFFICES TO REPRESENT OFFENDERS IN SOAP PROCEEDINGS RESULTS IN A CONSTITUTIONALLY IMPERMISSIBLE UNFUNDED MANDATE

Given the reform of indigent defense brought about by the Louisiana Public Defender Act of 2007, Article VI, §14(A)(1) of the Louisiana Constitution of 1974 applies to district public defender offices. The public defender offices, which are political subdivisions, must have funding appropriated by the legislature before any law requiring an increase in their expenditures may become effective:

No law or state executive order, rule, or regulation requiring increased expenditures for any purpose shall become effective within a political subdivision until approved by ordinance enacted, or resolution adopted, by the governing authority of the affected political subdivision or until, and only as long as, the legislature appropriates funds for the purpose to the affected

political subdivision and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the political subdivision for the purpose and the affected political subdivision is authorized by ordinance or resolution to levy and collect such revenue and only to the extent and amount of such revenue. [Emphasis added.]

Louisiana Constitution, Article VI, §14(A)(1).

This provision of the Louisiana Constitution prohibits the legislature from imposing additional duties upon political subdivisions without also providing funds therefor. If LSA R.S. 15:560.2(I) is applied to require public defender offices to represent offenders in SOAP proceedings without the necessary appropriation of funding by the legislature, the application will result in an unfunded mandate imposed by the State, in violation of Article VI, §14(A)(1) of the Louisiana Constitution.

A. District Public Defender Offices are Political Subdivisions

Louisiana's Public Defender Offices are political subdivisions. Political subdivisions are defined by Article VI, §44 of the Louisiana Constitution as, "...a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions." Louisiana R.S. 44:113(A)(3) (legislative auditor power) presumes that district public defender offices are political subdivisions:

The financial statements of the offices of the independently elected public local officials, including judges, sheriffs, clerks of court, assessors, and district attorneys, all parish governing authorities and all districts, boards, and commissions created by parish governing authorities either independently or in conjunction with other units of government, school boards, *district public defender offices*, municipalities, and all boards and commissions created by municipalities, either independently or in conjunction with other units of government, city courts, quasi public agencies, housing authorities, mortgage authorities,

or other political subdivisions of the state... [Emphasis added.]

Other provisions of law support the conclusion that district public defender offices are political subdivisions. Louisiana R.S. 39:1302(1)(f) provides that, for purposes of the Louisiana Local Government Budget Act, a district public defender office is a political subdivision. Louisiana R.S. 49:308(F), which applies to funds held in the state treasury, states that “political subdivision means ...office of public defender within a judicial district....” Louisiana R.S. 11:1903(A), which authorizes employees of district indigent defender programs to participate in the Parochial Employees’ Retirement System of Louisiana, suggests that a district indigent defender program is either a political subdivision or an instrumentality.

Political subdivisions, such as district defender offices, are constitutionally protected from unfunded mandates. Article VI, §14(A)(1) of the Louisiana Constitution requires the legislature to appropriate funds for the district public defender offices to carry out the laws passed by the legislature, and the law is effective only to the extent and amount that such funds are provided.

B. The Louisiana Legislature Has Not Appropriated Any Funding for District Public Defender Offices to Provide Representation to Offenders in SOAP Proceedings

The Louisiana Constitution, Art. VI, §14(A)(1) “contains specific limitations on the State's power to require political subdivisions to cover expenditures the State has mandated.” *State v. Peart*, 92-0907 (La. 7/2/93), 621 So.2d 780, 786. Here, no funding has been appropriated by the legislature for public defenders to take on the additional responsibilities required by the SOAP Law.

Indeed, exploration of the legislative digest and the fiscal note accompanying Act 205 reveals a conspicuous omission. There is no mention of public defenders or the LPDB in either of these documents. Consequently, the state's public defender offices should not be required to shoulder the burden of an additional class of clients who fall outside the scope of their representation responsibilities.

Act 205's fiscal note recognized that there would be an increase in state general fund expenditures if Act 205 passed, but stated that such an increase was indeterminable. If state inmates were housed at the local level, the fiscal note stated, "expenditures could increase by \$24.39 per day per offender sentenced." The fiscal note further stated that the Judicial Administrator's Office "indicated that the proposed legislation could result in an indeterminable increase in workload for district courts." The fiscal note further explained that "such costs would be a local responsibility (i.e. judicial expense fund, police juries or local governments)." Because public defenders are not participants in a judicial expense fund, police jury, or local government, the legislature obviously did not expect the State's public defender offices to bear the cost of representation required by the Act.

If the state's public defenders are to provide representation to this new class of clients created by LSA R.S. 15:560.2(I), the legislature must first pass an appropriations bill to cover this new and unexpected expense. Requiring representation by the public defender offices without the appropriation of appropriate funding will represent a violation of Art. VI §14(A)(1) of the Louisiana Constitution.

II. REPRESENTATION AT SOAP PROCEEDINGS ARE OUTSIDE THE SCOPE OF PUBLIC DEFENDER DUTIES

Public defenders have the important role in the legal community of providing constitutionally mandated legal services to indigent defendants. The public defender's role has a statutorily-prescribed, narrow definition that has long existed in Louisiana law and, most recently, reaffirmed in the Louisiana Public Defender Act of 2007. LSA R.S. 15:141 *et seq.*

Offenders who are about to complete their sentences and appear in court after an adverse finding by a SOAP panel do not fall within the statutory definition of "defendant" contained in Act 307. Louisiana R.S. 15:560.2(I) should not be interpreted in such a way as to command public defender representation in a proceeding where the courts have not determined that the Sixth Amendment right to counsel and Article I §13 of the Louisiana Constitution are implicated.

In the Louisiana Public Defender Act of 2007, the Legislature made clear its intention that public defenders are to provide legal services exclusively to criminal defendants. Louisiana R.S. 15:142, containing the legislative findings for the passage of the Public Defender Act, sets forth the Act's objective that all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding. LSA R.S. 15:142(B)(5). The statute goes on to provide in §142(E), "It is the *express intention* of the legislature that the Louisiana Public Defender Act of 2007 is designed to provide effective legal representation to *criminal defendants* who are unable to afford an attorney, consistent with the *right to counsel in our criminal courts*,

mindful of the need for law and order and an appreciation of victims' rights." [Emphasis added]. The term "defendant" is defined by Louisiana Code of Criminal Procedure Article 934(4) as "a person who has been charged with or accused of an offense."²

The scope of public defender representation is defined in LSA R.S. 15:143: "[p]ublic defender services' or 'indigent defender services' means the providing of legal services to indigent persons in criminal proceedings in which the right to counsel attaches under the United States and Louisiana constitutions."³ These statutes clarify that public defender services are provided to those persons who have been charged with committing an offense which carries with it the possibility of a penal sanction, limiting the right to those proceedings where the right to counsel attaches under the Louisiana and United States Constitution.

In all other cases, public defender representation is not implicated unless the person qualifies as a "defendant." The Third Circuit, in *Cooks v. Rapides Parish Indigent Defender Board*, 96-811 (La. App. 3rd Cir. 12/11/96) 686 So.2d 63, writ denied, 97-0409 (La. 3/27/97), 692 So.2d 398, was squarely presented with the issue of whether public defenders are required to represent persons who fall outside the statutory definition of defendant. In that case, a material witness who was imprisoned for fifty-six days in order to

² Offense includes felonies and misdemeanors. A felony is an offense that "may be punished by death or imprisonment at hard labor." La. C.Cr.P. Art. 933(3). "Misdemeanor" refers to any offense other than a felony and "includes the violation of an ordinance providing a penal sanction." La. C.Cr.P. Art. 933(4).

³ The Sixth Amendment to the United States Constitutions reads, "In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence." Article I, Section 13 of the Louisiana Constitution provides, in pertinent part, "At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment."

secure his testimony in a second-degree murder trial asserted that his Fifth and Sixth Amendment rights were violated by the refusal of the local district public defender to enroll as counsel. He further claimed that the material witness statute provided for a "... 'status offense'" which punishes someone for their status rather than criminal behavior..." and therefore the right to counsel attached when he was arrested. *Id.* at 6. After exploring the issues of the defining factors of criminal conduct and defendant, the court held that Mr. Cooks was not a defendant within the statutory meaning of that term. *Id.* at 7. Therefore, his right to appointed counsel was not violated. *Id.* The court, in finding the district public defender and then-existing Rapides Parish Indigent Defender Board free of any wrongdoing in the matter, explained that "[t]he functions and duties of an indigent defender board and a chief indigent defender are not implicated unless an individual is a defendant." *Id.* The court went on to decree, "[s]ince Cooks was not charged with or accused of an offense, the functions and duties of the IDB and [the district public defender] were not implicated. Thus, the IDB and [the district public defender] had no duty to provide counsel for Cooks." *Id.* at 8.

Just as Mr. Cooks was not entitled to public defender representation because he did not fit the statutory definition of "defendant," persons appearing in contradictory SOAP hearings are not entitled to receive public defender representation. The United States Supreme Court has held that post-incarceration monitoring or civil commitment of sexual offenders is not a criminal proceeding. In *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2002), the U.S. Supreme Court considered a challenge to Alaska's Sex Offender Registration Act, to determine *inter alia*, whether the

registration requirement is a retroactive punishment prohibited by the Ex Post Facto Clause. The Alaska Sex Offender Act is considered a “Megan’s Law” and contains two components: a registration requirement and a notification system. The *Smith* Court held that because the Alaska Sex Offender Registration Act is non-punitive, its retroactive application does not violate the Ex Post Facto Clause. *Id.*, 538 U.S. at 89-90, 105-106.

In reaching its conclusion, the dispositive question before the Court was whether the Alaska Legislature meant to establish “civil proceedings.” *Id.*, 538 U.S. at 92-93. After extensive analysis, the Court concluded that the Alaska Legislature’s intent was to create a civil, non-punitive regime. *Id.* The court noted the statutory text, which stated the legislature’s finding that sex offenders pose a high risk of re-offending, identified protecting the public from sex offenders as the law’s primary interest, and declared that release of certain information about sex offenders to public agencies and the public will assist in protecting the public safety. *Id.* The Court determined that an imposition of restrictive measures on sex offenders adjudged to be dangerous is a legitimate non-punitive governmental objective and has been historically so regarded. The Court further noted that nothing on the face of the statute suggested that the legislature sought to create anything other than a civil scheme designed to protect the public from harm. *Id.*

Likewise, in *Kansas v. Hendricks*, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997), the United States Supreme Court examined the civil commitment scheme created by enactment of Kansas’ Sexually Violent Predator Act. Unlike the registration requirements at issue in *Smith*, petitioner was challenging his post-incarceration confinement under the Act.

The Act established “procedures for the civil commitment of persons who, due to a ‘mental abnormality’ or a ‘personality disorder’ [were] likely to engage in ‘predatory acts of sexual violence.’” *Kan. Stat. Ann.* §59-29a01 *et seq.* (LEXIS, 2010). The determinative question before the Court was whether Kansas intended to establish a civil commitment procedure. *Hendricks*, 531 U.S. 346 at 361. The Court held that the statute was indeed civil in nature and comported with due process requirements. It further held that the Act neither ran afoul of double jeopardy principles nor constituted an exercise in impermissible ex post facto lawmaking due to the non-punitive nature of the statute at issue. *Id.*, at 369, 371.

Louisiana’s SOAP Law is distinguishable from the statutory schemes reviewed in *Smith* and *Hendricks*. Louisiana R.S. 15:560 *et seq.* is more than a registration and notification system⁴ but is less than full civil commitment. Among other things, the soon-to-be-released offender will be required to register for life and submit to mental health evaluations or treatment when ordered to do so by the probation or parole officer. LSA R.S. 15:560.3 He or she will be subject to electronic monitoring and intensive supervision of all internet-related activities. *Id.* Failure to comply with the electronic monitoring provisions will subject him, upon conviction, to fines and imprisonment at hard labor without the benefit of probation or parole. LSA R.S. 15:560.4. These provisions of the statute, in addition to the appointment of counsel issue, represent thorny issues which will likely require court rulings to sort out. While it is unclear at this point whether the statute is civil

⁴ Louisiana’s version of Megan’s Law, requiring sex offenders to register and notify local authorities and their communities, is codified in LSA R.S. 15:542 *et seq.*

or criminal, the issue of representation needs to be addressed at the outset of proceedings and independent of the other serious constitutional and practical problems with the statute.

In view of the fact that public defenders have a duty to represent criminal *defendants*, district public defenders are not the correct entity to provide representation as this class of person falls outside the statutory mandate of the Louisiana Public Defender Act. A convicted sex offender administratively determined to be a Sexually Violent Predator or Child Sexual Predator is not an indigent defendant as defined in the Louisiana Public Defender Act. These persons are not being charged with an offense as defined in the Code of Criminal Procedure. They are not appearing in a Child in Need of Care or Termination of Parental Rights case. Offenders are not challenging the fact or duration of their incarceration and, thus, cannot be classified as post-conviction petitioners. The persons appearing in SOAP proceedings are currently incarcerated and are coming before the court for a status determination. While an adverse ruling will subject these persons to a lifetime of highly intrusive monitoring and registration requirements, a finding of Sexually Violent Predator or Child Sexual Predator is not a criminal offense which carries with it the possibility of a penal sanction.

Therefore, these offenders do not meet the statutory definition of “defendant” and the Sixth Amendment right to counsel is not implicated. Since this class of offenders who have served their sentence does not meet any of the criteria that would implicate public defender representation, appointment of the state’s public defenders in these hearings is not authorized by law.

III. THE SOAP LAW FAILS TO PROVIDE A FUNDING SOURCE FOR REPRESENTATION OF OFFENDERS

In those situations where the Legislature has provided for a statutory right to counsel in proceedings where there is otherwise no constitutional duty to provide representation, the relevant law unambiguously assigns representation and funding responsibilities. For example, LSA R.S. 15:179 (appointment of counsel at parole revocation hearings) mandates that, “[t]he Department of Public Safety and Corrections shall provide legal representation for each indigent parolee who is charged with violating the conditions of his parole...” LSA R.S. 15:179 (A). The statute goes on to provide that attorneys “shall be paid reasonable compensation and reimbursement for expenses necessarily incurred, which shall be fixed and paid by the Department of Public Safety and Corrections.” LSA R.S. 15:179(C). **This provision is the most clearly analogous to the SOAP proceedings**, which may mean that the Department of Corrections is the appropriate funding source for counsel.

In drafting the SOAP Law, the legislature failed to provide a funding source for representation of offenders in SOAP proceedings. Since public defenders represent criminal defendants only in matters where the right to counsel under the Sixth Amendment attaches and where the public defenders are clearly required by statute to do so, it is improper to assign public defenders representation responsibilities in SOAP proceedings where there is no explicit authorization in the statute assigning this responsibility to public defenders or funding public defenders for this task.

IV. THE SOAP LAW FAILS TO DESIGNATE A SOURCE FOR COUNSEL FOR THE OFFENDERS

Unlike similar statutes and criminal procedure articles mandating provision of counsel upon a finding of indigency, Act 205, as enacted in LSA R.S. 15:560 *et seq.*, does not reference the Louisiana Public Defender Board or the Public Defender Act. This is a significant omission in that this ambiguity represents a substantial deviation from prior legislative practice.

The Code of Criminal Procedure contains two articles that address appointment of counsel for indigent defendants. Louisiana's assignment of capital counsel statute, Louisiana C.Cr.P. Art. 512, provides that, "[w]hen a defendant is charged with a capital offense and appears for arraignment without counsel, the court shall provide for his defense in accordance with the provisions of R.S. 15:145." Additionally, Louisiana C.Cr.P. Art. 513 (assignment of counsel in other cases) provides in pertinent part, "[w]hen a defendant states under oath that he desires counsel but is indigent, and the court finds the statement of indigency to be true, the court shall provide for counsel in accordance with the provisions of R.S. 15:145 to the defendant before he pleads to the indictment."⁵

Likewise, Title XIV of the Louisiana Public Defender Act contains two provisions relating to delivery of public defender services to indigent clients. Louisiana R.S. 15:175 provides the procedure for determining indigency and makes clear that the appointment of counsel is managed through the local public defender office. In LSA R.S. 15:169 (representation of capital

⁵ LSA R.S. 15:145 was a portion of the public defender law that was repealed by Act 307 of the 2007 Regular Session of the Louisiana Legislature. The current statute governing public defender appointments is LSA R.S. 15:175.

defendants), repeated references are made to the “board.” For example, the first sentence of 15:169(A) reads, “[i]n cases where a sentence of death has been imposed, the board shall promptly cause counsel to be enrolled to represent the defendant.” Louisiana R.S. 15:143 supplies the definition of “board:” “‘Board’ means the Louisiana Public Defender Board authorized to regulate public defender services.” Louisiana R.S. 15:178 (appointment of appellate and post-conviction counsel in death penalty cases) provides, “[i]n a capital case in which the trial counsel was provided to an indigent defendant and in which the jury imposed the death penalty, the court, after imposition of the sentence of death, shall appoint the Louisiana Public Defender Board, which shall promptly cause to have enrolled counsel to represent the defendant on direct appeal and in any state post-conviction proceedings, if appropriate.”

The fact that Act 205 did not mention which governmental entity is responsible for providing indigent representation in SOAP proceedings evidences a departure from prior legislative practice. The omission renders the statute vague and ambiguous. Absent a clear legislative directive, statutory ambiguity should not be utilized to justify an appointment of counsel provision that is not authorized in accordance with the Louisiana Public Defender Act.

V. APPOINTMENT OF COUNSEL DECISIONS ARE MADE BY DISTRICT PUBLIC DEFENDERS

In enacting the Public Defender Act (Act 307), the 2007 Legislature made sweeping reforms to the public defender system in Louisiana. Specifically, the Legislature sought to, among other things, end inefficient

delivery mechanisms at the local level, install a regulatory authority to oversee the state's public defenders, and ensure "that the public defender system is free from undue political and judicial interference and free of conflicts of interest." LSA R.S. 15:142(B)(2). Once Act 307 was signed into law, the state's judges were relieved of their power to appoint attorneys to indigent defendants. That responsibility now lies with the district public defenders.

The District Public Defenders are responsible for the appointment of counsel to indigent defendants, although LSA R.S. 15:175 requires the court to hold a preliminary hearing to determine indigency. Upon a finding of indigency, the "court shall require the accused to make application to the district public defender office or an attorney appointed or under contract to provide indigent defender services..." LSA R.S. 15:175(A)(1)(d). After the defendant applies to the local district defender office, a further inquiry is made into the individual's economic circumstances and, if the client is found to be indigent, the local office shall enroll as counsel.

In passing the Louisiana Public Defender Act of 2007, the Legislature sought to ensure that local district public defenders were free from outside interference – both political and judicial. The court is not involved in the appointment of counsel; rather their role is confined to holding a hearing and making a preliminary determination of indigency. Therefore, it is the position of the LPDB that judicial appointment of public defenders in these matters does not conform either to the spirit or text of the Public Defender Act.

CONCLUSION

This Court should reverse the District Court's appointment of the public defender to represent an offender in SOAP proceedings. Given the absence of a funding appropriation by the legislature for expenditures associated with representation described in LSA R.S. 15:560.2(I), requiring public defenders to provide representation will result in an unfunded mandate imposed by the State, in violation of Article VI, §14(A)(1) of the Louisiana Constitution.

Additionally, unlike other similar legislative acts, the SOAP Law fails to designate a source for counsel as well as a funding source for the expenses associated with representation at SOAP proceedings.

Accordingly, this Court should grant the application for supervisory writs of review filed by Craig Colwart, District Public Defender, and reverse the District Court's appointment of the public defender to represent an offender in SOAP proceedings.

Submitted by:



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CERTIFICATE OF SERVICE

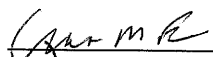
I hereby certify that a legible copy of the above and foregoing **BRIEF OF AMICUS CURIAE** has been delivered by United States mail, postage pre-paid and properly addressed, to the following:

The Honorable James McClelland, Judge
16th Judicial District Court
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New Iberia, LA 70560

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Baton Rouge, Louisiana, this 12th day of August, 2010.



Jean M. Faria

STATE OF LOUISIANA
THIRD CIRCUIT COURT OF APPEAL

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STATE OF LOUISIANA

VERSUS

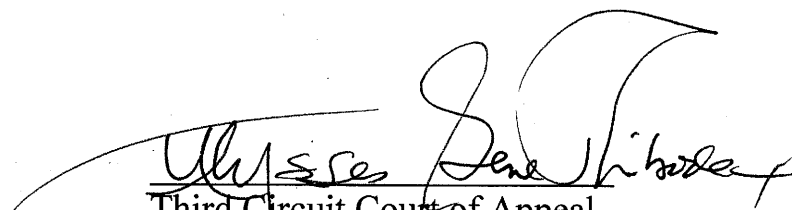
TROY BONIN

ORDER

Considering the foregoing,

BE IT ORDERED THAT counsel on behalf of the Louisiana Public Defender Board are hereby granted permission to file a brief of *Amicus Curiae*.

Lake Charles, Louisiana, this 18th day of August, 20 10.


Third Circuit Court of Appeal
Chief Judge

SCANNED
THIRD CIRCUIT COURT OF APPEAL